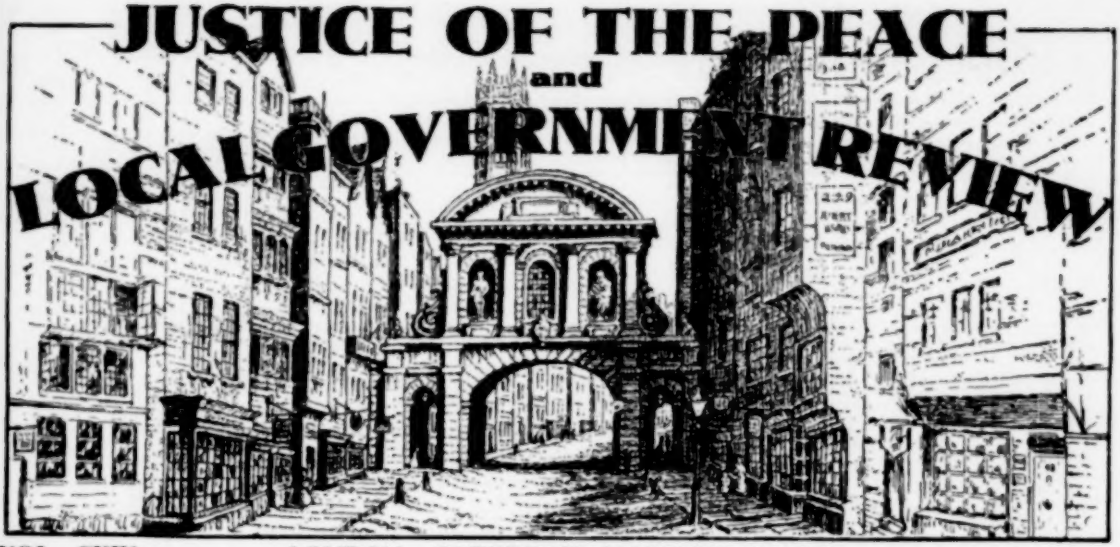
JUSTICE OF THE PEACE and LOCAL GOVERNMENT REVIEW



VOL. CXIV. LONDON: SATURDAY, JANUARY 14, 1950. No. 2

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REPORTS

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

None of the vacancies in these columns relates to men and women coming within the provisions of the Control of Employment Order, 1947, S.R. & O., No. 2021, or the vacancy is for employment excepted from the provisions of the Order.

Amended Advertisement.

CITY OF LONDON

Assistant Clerk to the Justices Sitting at Guildhall Justice Room

APPLICATIONS are invited for the above appointment. Candidates must be not less than thirty and not more than forty-five years of age on January 1, 1950, and must possess a professional legal qualification. They must also have had experience of Magisterial Law and Practice and be capable of acting as Clerk of the Court without supervision. The salary scale is £750 per annum, rising, in the discretion of the Court of Aldermen, by annual increments of £25 to a maximum of £900 per annum. The commencing salary to be offered to the successful candidate will be fixed within the limits of the scale salary with due regard to his experience. Applications on the prescribed form (which can be obtained from the Town Clerk, 55-61, Moorgate, London, E.C.2.) in candidate's own handwriting, accompanied by copies of three recent testimonials, must reach him not later than Saturday, January 28, 1950.

PICKFORD

January 3, 1950.

METROPOLITAN BOROUGH OF WANDSWORTH

Second Assistant Solicitor

APPLICATIONS are invited for the established post of Second Assistant Solicitor in the Town Clerk's Department. The salary paid will be in accordance with Grade A.P.T. VIII of the National Scheme of Conditions of Service, *viz.*, £715 to £790 inclusive.

Applicants must have had considerable experience in the Town Clerk's Department of a local authority and possess a sound knowledge of municipal law and practice, including advocacy and the acquisition of land for all purposes.

The appointment will be subject to the provisions of the Wandsworth Borough Council (Superannuation) Acts, 1909 to 1940, to the passing of a medical examination by a medical officer nominated by the Council and to the National Scheme of Conditions of Service. Canvassing will disqualify. Applicants must state, in the order given, full name and address, age, whether married or single, war service, date of admission, present appointment and salary, previous appointments, particulars of experience, date on which appointment could be taken up, and whether to their knowledge they are related to any member or to any senior officer of the Council. Applications, giving the names of two persons to whom reference may be made, should reach the Town Clerk, Municipal Buildings, Wandsworth, S.W.18, not later than February 1, 1950, the envelope being endorsed "Second Assistant Solicitor."

R. H. JERMAN,
Town Clerk.

Municipal Buildings,
Wandsworth, S.W.18.
January, 1950.

BOROUGH OF COLCHESTER

Assistant Solicitor

APPLICATIONS are invited for the post of Assistant Solicitor in the Town Clerk's Department at a salary in accordance with the recommendations of the National Joint Council for Local Authorities' Administrative, etc., Services (A.P.T. Grades V (*a*)—VII according to legal experience after admission).

Applicants will be required to assist in the general work of the office and previous local government experience will be an advantage but is not essential. The appointment will be subject to the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination. The appointment will be terminable by one month's notice on either side.

Applications endorsed "Assistant Solicitor" and stating age, present salary, qualifications and experience, and the names and addresses of two persons to whom reference may be made, must reach the undersigned not later than January 25.

Canvassing will disqualify, and an applicant who is related to a member or a senior officer of the Council must disclose the fact in his application.

N. CATCHPOLE,
Town Clerk.

Town Hall,
Colchester.
January 4, 1950.

BOROUGH OF PRESTWICH

Appointment of Deputy Town Clerk

APPLICATIONS are invited for the appointment of Deputy Town Clerk at a salary on Grade VIII of the A.P.T. Division of the National Scale of Salaries (£685 per annum rising to £760 per annum by annual increments of £25). Candidates must have legal qualifications and experience in local government and conveyancing.

The appointment will be subject to : (1) the National Scheme of Conditions of Service as approved by the Council ; (2) the provision of the Local Government Superannuation Act, 1937 ; (3) termination by two months' notice from either side ; and (4) the successful candidate passing a satisfactory medical examination by the Council's Medical Officer of Health.

Applications endorsed "Deputy Town Clerk" stating age, details of qualifications and previous experience, with the names and addresses of at least two responsible persons to whom reference may be made as to character and ability, should be sent to me not later than January 30, 1950.

Canvassing will disqualify, and applicants must disclose any relationship to any member or chief officer of the Council.

F. H. ASHTON,
Town Clerk.

Town Clerk's Office,
Town Hall,
Prestwich.
January 6, 1950.

FLINTSHIRE COUNTY COUNCIL

APPLICATIONS are invited for the appointment of Assistant Solicitor in the department of the Clerk of the Peace, and of the County Council at a salary in accordance with Grade A.P.T. VIII of the National Scheme of Conditions of Service (£685 per annum rising by annual increments of £25 to a maximum of £760 per annum). Previous Local Government experience will be an advantage.

The appointment will be subject to (*a*) the National Scheme of Conditions of Service, as modified by the County Council, (*b*) the Local Government Superannuation Act, 1937, (*c*) to the successful candidate passing a satisfactory medical examination, (*d*) to the Terms of a formal agreement and (*e*) to three calendar months' notice in writing on either side.

Applications on forms to be obtained from the undersigned should be returned so as to be received not later than January 23, 1950.

W. HUGH JONES,
Clerk of the County Council.

County Buildings,
Mold.

HAYES AND HARLINGTON URBAN DISTRICT COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor at a salary in accordance with the National Joint Council's Scale as under, plus appropriate London Weighting :

(*a*) After admission and on first appointment within A.P.T. Divisions Grade Va (£550—£610 per annum).

(*b*) After two years' legal experience from date of admission within A.P.T. Division Grade VII (£635—£710 per annum).

Experience in conveyancing and of prosecutions in the summary jurisdiction courts is desirable, and previous municipal experience would be an advantage.

The appointment is subject to (*a*) the Council's Scheme of Conditions of Service, which is based on the National Scheme with minor amendments, (*b*) the Local Government Superannuation Acts, 1937 and 1939, (*c*) the successful candidate satisfactorily passing a medical examination and (*d*) one month's notice on either side.

Forms of application and further particulars and conditions of appointment may be obtained from the undersigned to whom completed applications should be returned not later than January 23, 1950.

A. E. HIGGINS,
Clerk of the Council.

Town Hall,
Hayes,
Middlesex.

SITUATIONS VACANT

NORTH WILTS—Conveyancing and General Clerk required, also Common Law Clerk. Good salary but according to age and experience. Accommodation may be available. Apply with copy of testimonials and photograph (returnable). Box A.7, office of this paper.

PROBATE CLERK required by busy West Midland firm. Salary by arrangement. Accommodation might be found. Send photograph and copy of testimonials to Box B.8, office of this paper.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837.]

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NOTES of the WEEK

Common Sense about Juvenile Courts

We hope that Mrs. Dermot Morrah's article "Child Offenders in Two Countries," which appeared in the *Sunday Times* of January 1, will be widely read. Mrs. Morrah is one of the chairmen of the metropolitan juvenile courts. She has visited the United States and seen something of the juvenile courts there, and she is able to compare and contrast the methods in the two countries.

The fundamental difference is that in this country proceedings against juvenile offenders are essentially criminal, while in America they are non-criminal and entirely protective, as are the proceedings in this country relating to children in need of care or protection or beyond control.

Many people in this country are constantly advocating change in our own system to an approach towards the American method. Not unnaturally, some American audiences were horrified to hear than in England a child of eight could be charged with crime. However, Mrs. Morrah, who is a lay justice with the outlook of a social worker, can say: "I was able to show that our system was no harsher than theirs, and that the very criminal procedure which was theoretically so horrifying in fact ensured absolute fairness." A pronouncement of this kind from a lay magistrate experienced in the work of juvenile courts is a tribute to our well tried principles of law and justice, which can be perfectly adapted to the trial of the youngest offenders.

Mrs. Morrah also refers to coddling in American juvenile courts, where the child has seldom been impressed with a sense of responsibility, and psychiatry has taken the place of salutary punishment. That charge, rightly or wrongly, is made against some English juvenile courts, and it is well that we should be on our guard, though the charge is certainly not justified in the case of many courts. Nor could it be said that in this country the bench does little more than ratify the decision of psychiatrists or other experts. In America, Mrs. Morrah found reason sometimes to wonder why there should be a judge at all and why the matter should not be left to a panel of psychiatrists.

There are many critics of our system who wish to raise the age of criminal responsibility, and who would like children to be dealt with by welfare committees and not by courts of law. We prefer Mrs. Morrah's robust common sense. Above all he (the child) is shown that even at the age of eight the distinction between right actions and wrong actions is absolute, that whatever the mitigating circumstances may be, he is responsible for his own actions which will mould his life. If after trial he is found guilty he is then offered any amount of sympathetic help to enable him to bear his responsibility.

We have never doubted that our juvenile court system, whatever its imperfections, is basically sound and is best suited to the people of this country; though we must recognize that conditions in the United States are vastly different, and that there is room for differences of idea and practice as between the two countries.

Probation in Surrey

A valuable and interesting feature in the latest report of the probation committee for the Surrey Combined Probation Area consists of some comments on the Criminal Justice Act, 1948, and some statement of what is being done in the county in consequence of its coming into operation. For instance, it is suggested that it is inconvenient to have in force a number of orders under the now repealed Probation of Offenders Act, 1907, side by side with orders under the new statute, and the general policy has been to convert old orders into new ones, as provided by sch. 8 to the Criminal Justice Act.

As to the power now given to both probation committees and case committees to co-opt members, it is stated that no need is likely to arise in the case of the probation committee, and so it has been decided not to co-opt, but it is thought probable that the power will be exercised by the case committees on account of their many duties in connexion with the supervision of the work.

On the subject of delegation, the probation committee is of opinion that some urgent matters should be dealt with in this way, and it is proposed to ask the Secretary of State to approve of the delegation to a sub-committee of the power to make new appointments of ordinary probation officers and to sanction expenditure up to a limit of £50 in respect of any one office on items of equipment or repairs which are covered by the budget estimates approved by the committee.

Dealing with the number of persons placed on probation, the report notes an increase in the number of persons under supervision from quarter sessions, in spite of the fact that the number of persons charged on indictment fell from 532 to 387.

Prison Without Bars

It has been generally understood that the "minimum security" prisons were used only for those prisoners who, by reason of their previous character or conduct, had shown themselves worthy of trust, and therefore almost certain not to abuse such special treatment.

It is therefore surprising to read of a case in which a man who had been sentenced to seven years for robbery with violence was transferred to Ley Hill Open Prison after serving only one year of his sentence. That is what is stated in a Sunday newspaper, which tells how the man, having absconded from Ley Hill, appeared later at the Gloucester Assizes, where he was convicted of burglary and wounding. For these offences he was sentenced by Finnemore, J., to ten years' imprisonment.

The learned judge spoke of the disquiet caused in the neighbourhood of Ley Hill, and said the matter was one for careful consideration by the Prison Commissioners.

The general public is certainly not inclined nowadays to criticize unduly a policy of leniency towards prisoners who give evidence of trustworthiness and of a desire to make good. It does ask, however, that men who have been found guilty of crimes of violence, and who may still be dangerous, should not be given too much liberty or given liberty too soon. If the facts are as stated, there is need for inquiry and explanation. Minimum security prisons must not mean minimum security for the law-abiding public.

This particular prisoner seems to have pleaded that his memory was a blank as to the past five years. That may be a matter for medical authorities; it cannot affect the protection of the public from danger.

Pedal Cyclist with Defective Vision

We wrote at p. 751 of last year's volume concerning the problem of insurance by pedal cyclists. An inquest at Plymouth on a sixty-three-year-old woman who died after an accident in which a pedal cyclist was involved emphasized an even more serious aspect of the law's lack of control over these road users. The pedal cyclist in question is reported to have said at the inquest that he saw a black object in the road but could not stop in time to avoid it. He said that his sight had been defective since his youth, and that he could see all right in the daylight but was not sure of himself at night.

No licence or permission to use a pedal cycle is necessary and it is true to say, therefore, as a police inspector is reported to have said at the same inquest, that a man could be blind and still ride a pedal cycle. If a cyclist with defective vision or other disability which makes it unsafe for him to ride a cycle, rides in such a way as to endanger others he can, of course, be prosecuted under the appropriate statute. This, however, is hardly the point. He is a potential danger all the time, and with that aspect of the problem the law is powerless to deal. Whether it will always remain so we hesitate to say. In these days of traffic congestion and heavy road casualties there are strong arguments in favour of using all practicable means to reduce potential dangers. The dangerous cyclist may kill himself. That is unfortunate. What is even more unfortunate is that others may be killed in trying to save him from his self-imposed fate.

Mayoral and Other Transport Vehicles

We spoke a while ago about the mayoral car; we have indeed more than once condemned the notion that mayors must maintain their civic dignity by being conveyed from point to point in vehicles of a certain size, and that they cannot consistently with that dignity be driven by a woman chauffeur. In any other context these pretentions would at the present day seem too absurd to call for refutation, like the reason said to have been put forward by the appropriate committee in a certain English city, for spending more than £2,000 on a new car, that the lord mayor's tall hat must be accommodated. Another point to which criticism is from time to time very properly directed is the use of mayoral cars, and indeed other cars provided for personalities in local government, for purposes other than those of performance of their public duty. A recent report from Merthyr Tydfil, one of the boroughs where accounts are subject to full district audit, indicates that a former mayor has paid some £16 for petrol alleged to have been used during his year of office for journeys (in his official 24 h.p. Daimler) otherwise than in his capacity as mayor. Repayment of this account is satisfactory so far as it goes, but it is to be wished that, not merely Merthyr Tydfil but elsewhere, persons accepting public office should understand that official cars are for official use. Another incident at Merthyr Tydfil has a parallel at Rowley Regis. At Merthyr Tydfil two 10 h.p. Hillman cars used by the police were disposed of during the year (incidentally, if ten horse power cars can be used for the police why should the mayor of the same borough have a 24 h.p. Daimler?). One of these was transferred to the borough engineer's department for £200, and about this it seems there is no question. As regards the other, a circular was issued to all departments inviting applications, and the corporation's omnibus superintendent was asked for a report upon its value. So far, quite a proper procedure. The superintendent put the value at £200; and in the absence of applications from other departments for its transfer at that figure, he was himself allowed to buy it. According to the district auditor, it would have obtained a much higher price if sold by public advertisement or by auction. At Rowley Regis, there was a car for disposal which was in a bad state of repair; the health committee were apparently desirous of selling it for what it would fetch at the end of 1947, since otherwise it was expected to be taken over by the county council as the local health authority, without compensation. Disposing of it in a hurry looks, in these circumstances, a little strange, as between the two public authorities, but that is not the point we are discussing here. The story in the newspaper is not altogether clear, but it seems that tenders were invited for purchase of the car by outsiders, and that the person who put in the highest tender did not, after all, wish to have the car. It was thereupon handed over to the medical officer, apparently at the tender price. The district auditor's report upon this incident was considered by a sub-committee of the council which expressed the opinion that the medical officer had been indiscreet, in that his action was liable to be misinterpreted. There seems to have been no suggestion in the Rowley Regis case of anything improper in the sense of undue influence or corruption. In the Merthyr Tydfil case there was no actual suggestion of this, but there was "little doubt," according to the district auditor, "that the selling price of the cars was substantially lower than that which might have been obtained by sale by public advertisement or auction, and it is possible that £100 to £200 more than the actual price could have been obtained for each car. The sale of the second car to an officer of the council who had advised the committee on its value and condition without independent valuation was most unsatisfactory."

The auditor concludes: "Great care should be taken by a local authority to avoid in such transactions any possibility of a suggestion that an officer may by reason of his position be obtaining an advantage not open to the general pubic. Moreover, the council should always in the interests of the ratepayers obtain the highest possible price for any surplus materials or equipment."

Both of the incidents in regard to the disposal of cars emphasize the importance of that provision in the model standing orders, to be found in *Lumley*, p. 1131.

The same report of the district auditor at Rowley Regis called attention to consumption of petrol by one of the council's sanitary vehicles, beyond any possibility of reconciling with its recorded mileage and the driver's time sheets. In August, 1946, which was before the days of "red petrol," indeed at a time when the black market was flourishing, quite a large quantity of petrol debited to the vehicle disappeared without trace. The driver and mechanic concerned with the vehicle in that month were no longer in the council's service. The council's sub-committee considered several possible causes—that August is the chief holiday month is not mentioned among these. Such losses ought not to be too difficult to stop: the fault at Rowley Regis did not lie in absence of a proper system, but in a departmental failure to insist on proper records according to the system.

THE JUSTICES AND THEIR CLERK

The normal court of summary jurisdiction consisting of two or more justices advised by their clerk is a typical English institution. Considering it theoretically and taking into account the complexity of the many provisions which it has to administer one would be amply justified in saying that it couldn't work. But we all know that in practice it does, sometimes very well, generally satisfactorily and occasionally rather badly. The passing of the Justices of the Peace Act, 1949, is, we think, a suitable occasion for considering the various factors that decide whether the court is to be a good, an average or a bad one.

We begin with an apology for being unable to say with certainty what are the exact provisions of the new Act, but that is not our fault. It has passed into law, but is not yet in force, as it is to come into operation (as a whole or piecemeal) on such day or days as His Majesty may by Order in Council appoint. We can only hope that before the first of such days arrives it will have been possible to buy a copy of the Act. It is so much more convenient to do that than to try to work with a copy of the Bill plus numerous editions of *Hansard*.

The Act is intended mainly to give effect to the recommendations of the Royal Commission presided over by the late Lord du Parcq and of the Roche Committee. We hope to deal in detail with its provisions as soon as it is possible to be quite certain what they are. For the moment our concern with it is that it gives modern approval to the continuance of the system of courts of summary jurisdiction consisting of unpaid and unprofessional men and women advised by a clerk with professional (or in the exceptional case practical) knowledge and experience.

Let us consider first the position of the clerk. Various statutes put upon clerks to justices duties for the performance of which the clerk and not the court which he serves is responsible. These include the sending of various notices, the accounting for moneys received at the court, the keeping of a register of clubs and so on. But no statute puts upon the clerk any responsibility for the decision at which the court arrives in dealing with the cases that come before it or for giving advice to assist the justices in arriving at their decision. For the future, under the new Act, justices' clerks are to be appointed by the magistrates' courts' committee of the county or county borough in whose area they serve, and (after allowing an interval for the benefit of existing clerks and their assistants) are to have the professional qualification of being either a barrister or a solicitor of at least five years standing.

Opinions differ on this question of professional qualification, but the Act having been passed into law, discussion on that matter is beside the point. We do agree wholeheartedly with the new requirement that a solicitor to qualify for appointment shall be of at least five years standing. There was no reason to suppose that merely by passing the necessary examinations which qualified him to be enrolled as a solicitor a man had acquired the knowledge and experience fitting him to be appointed at once to advise a bench of lay justices, and the five years which will in future be required after qualification do give a real opportunity to acquire the practical knowledge and experience necessary for the post.

The point we would emphasize is that in spite of the new Act with the new method of appointment and new qualification there is still no hint of any attempt to define the duties of the clerk in court.

The position of the justices is clear. They and they alone are responsible in law for the decisions at which they arrive, whether those decisions are purely decisions of fact which any person of normal commonsense would be prepared to take or whether they involve most complicated questions of law. How are they to be fitted to undertake that responsibility?

There can be no doubt that in some instances they really do not do so. If the bench is composed of quite ordinary people of no particular personality and the clerk is a forceful and determined man the decision may well be that of the clerk with the chairman of the bench acting as his mouthpiece. We do not hesitate to say that this is entirely wrong and that justices should not allow themselves so to act. It is true that they cannot be and are not expected to have any considerable knowledge of legal procedure, the laws of evidence and the many other matters required in dealing with the business of a modern court of summary jurisdiction. It is equally true, however, that no one can oblige them to accept the responsibility of becoming a justice of the peace, and, if they do accept it, it is their own voluntary act.

The new Act recognizes the difficulty that arises and it makes every magistrates' courts' committee responsible for making and administering schemes providing for courses of instruction for justices of their area. These must be in accordance with arrangements approved by the Lord Chancellor. The Act also provides that in every petty sessions area there shall be a chairman and one or more deputy chairmen of the justices chosen from amongst themselves by the magistrates of that area by secret ballot. What is meant to be the effect of these two provisions? As we see it we think that the former emphasizes the requirement that anyone who voluntarily undertakes the duty of sitting in judgment on his fellow men (he may send them to prison in certain instances for as long as two years) has an absolute duty to make himself sufficiently acquainted with the duties of his office to be able *himself* satisfactorily to discharge them. Note, please, that we say "himself" not "by himself." The latter provision gives benches the opportunity to choose as chairmen and deputy chairmen those amongst themselves best fitted for the task without fear of having openly to offend those whose seniority or position has been, in the past, their only qualification, and a most inadequate one.

Once a petty sessional division has secured these two essentials the answer to the problem of the satisfactory functioning of the court lies in team work. The two essentials are firstly a bench composed of men and women of average intelligence, impartiality and goodwill who are prepared to make themselves sufficiently acquainted with their job, and secondly a clerk who is really competent and up-to-date in his knowledge of law and procedure in summary courts and who knows what are his functions as clerk and where they end.

So far as the bench is concerned a competent and reasonably experienced chairman is a necessity. He or she has to be the mouthpiece of the court and to maintain its dignity and prestige. He cannot fulfil either function satisfactorily without adequate knowledge and experience. But above all the chairman must remember that he is the chairman of the bench and not the bench. He must not ignore his colleagues and must be prepared, if he finds himself in a minority, gracefully to accept the decision of the majority as that of the court. The good chairman can do a great deal to introduce new justices to the work and to enable them to take their full part in it.

The other members of the bench must remember that it is not very satisfactory or dignified if the court acts publicly like a sort of committee with no one really in charge of the proceedings, and they should accept, therefore, that the chairman is normally their mouthpiece. But this does not mean that they are not to play their full part in helping to arrive at the decisions which the court is to give, and they should see to it that a chairman does not ignore them and act as if he were a stipendiary magistrate sitting alone. We do not mean by this that there should be public exhibitions of disagreement on the bench. Nothing could be more undignified or unjudicial. If anything of substance has to be discussed this should be done in the retiring room where all members of the court can speak freely in discussing the matter in issue.

Where does the clerk come into the picture? The answer is, in the background. It is generally convenient for him, since he has to take the notes or depositions, or to see that they are duly taken, to examine the witnesses when the parties are not represented. We know that this practice has been disapproved on occasions, but we are still of opinion that it is a good one. He has also to see all the time that the procedure of the court is regular, and here again there is much that he can do without reference to the bench unless the chairman has expressed a wish to do certain things himself. When, however, questions of law arise which have to be decided it is not for the clerk to rule on them and it is not for the bench to allow him so to rule. His function is to put before the bench the possible points of view, to suggest which he thinks is the correct one and to explain as the bench desires any detail on which they want more information. It is then for the chairman to say what the decision of the court on that point is. We quite realize that this will take longer than for an impatient clerk to give the answer without protest from a complaisant bench. It is, however, the only correct procedure, and it does not leave the court open to an objection by an advocate that he was not asking for the learned clerk's ruling on the point but for that of the bench, an objection to which no summary court could properly take objection.

We think that what we have said makes it obvious where the team-work of which we have spoken comes in. It is in that integration of the functions of the clerk and those of the bench that makes the work proceed smoothly so that there is always a calm and judicial atmosphere which satisfies people not only that justice is being done but that it manifestly appears to be being done.

We are aware that some clerks will say "Oh, my bench don't want to be bothered to hear all about these points, they prefer me to tell them what to do," and they will envisage interminable delays and holding up of the business of the court. We remain, however, quite unrepentent and unconvinced. To benches who would adopt that attitude to their clerks we say that they are not doing the job they have undertaken to do, and that it is their bounden duty to study the procedure and practice sufficiently to be able to make up their own minds and to give their own decisions. There is no difficulty about their doing this if they take their job seriously. There are many good small books on the subject, and the Magistrates Association, which they can all join if they wish, offers facilities by courses of instruction and by lectures. Even nearer home many clerks to justices take great trouble to bring the effect of new legislation before their magistrates, and are always ready to help them with any points of difficulty.

The new Act makes it clear that the lay bench advised by a duly appointed clerk is to continue to shoulder the burden of administering the criminal law of this country in well over 90% of the cases that come before the courts. We cannot believe that anyone will argue seriously that what we have urged is wrong, and to those who find it inconvenient we would say that it is highly inconvenient for people to have to appear before courts and perhaps to be deprived of their liberty. It is, therefore, an inescapable responsibility on those whose duty it is to compose and administer such courts to see that their work is properly done and that they each discharge their own personal responsibility to the full.

PETIT MAL

By CRAIG PARRY HUGHES

Shortly after eight o'clock on a clear July morning a three coach passenger train entered the station at G. Immediately outside the station is a level crossing which was opened to road traffic after the train had passed. The engine was uncoupled and taken further along the "Down" line to a point where it could be reversed on to the "Up" line. In the meantime, a light engine had been reversed from the engine sheds some two miles away, with the ultimate object of coupling it to the other end of the three coaches, and so providing a return service to a nearby junction. There was nothing haphazard about the manœuvre, which followed a standard procedure. The relief engine was halted at signal 36 over two hundred yards from the station. After a period of some three minutes, signal 36 was lowered, and the engine quite properly resumed its journey towards the level crossing and the station. The speed never exceeded five miles per hour and for part of the journey the engine was probably travelling under its own impetus. The track was straight, visibility good and it must have been manifest to the most unobservant that the gates were closed. Hard by the gates were two signals, numbered 38 and 40, and both these signals were set at danger. Furthermore, a fellow driver who chanced to be riding on the footplate, spoke to the driver twice to warn him that the signals were at danger. In fact, it was the speaker who applied the brakes, as the driver failed to respond to the multiplicity of warnings. The application of the brakes came too late, however, and the engine crashed through the gates, and on to the crossing, where it killed a cyclist. Some time after the accident, the driver asked his fireman if the signals had been against him.

It was on these facts that a charge of manslaughter was based against the driver. The subsequent trial resulted very properly in the acquittal of the accused. There is one feature of this case that might properly engage the attention of higher circles than the modest orbit of the writer.

Virtually all the prosecution's case was accepted by the defence, and the cross-examination was seemingly directed towards emphasizing the inexplicability of the accident. When the doctor who had conducted the post mortem gave evidence he was asked about the effects and symptoms of a form of epilepsy known as Petit Mal. The witness agreed that during the attacks of such an affliction, the victim would suffer from black-outs and be incapable of voluntary action. Two defence witnesses described what they had seen of the accused during what may be called "turns." These witnesses were followed by a very eminent specialist in nervous disorders, who had conducted exhaustive tests and inquiries, and was in a position to produce a brain graph taken from the accused by means of an

electric encelograph. As a matter of interest it revealed the typical spear-pointed graph associated with Petit Mal. In view of advice from its own medical expert, the prosecution urged their case no further.

Petit Mal was the key to the whole truth in a seemingly inexplicable affair. The unfortunate accused had been the victim of an attack which robbed him of all awareness and all volition.

The writer confesses that until this case he had never heard of the malady, but he has endeavoured to correct this ignorance by intensive inquiry. He is left with a feeling of some disquiet.

It appears that the majority of sufferers have no idea of their trouble. The blank periods are sometimes very brief and may pass unobserved or at least unrecognized. One informant, a man with a life-time of experience in this and kindred diseases, stated that some three *per cent.* of the population have Petit Mal. How many pilots, engine drivers and omnibus drivers are drawn from the ranks of the three *per cent*? Accident proneness has compelled recognition in industrial circles and known epileptics are safe-guarded against their peculiar vulnerability. But Petit Mal is more subtle than its convulsive cousin and may pass undetected until the damage is done. Suitable tests already exist to identify the disease and it is only reasonable to hope that these tests will be applied to intending entrants in those careers where human life depends upon quick thinking and split-second reaction.

It may be argued that the numbers involved are too high for the necessary tests to be applied and that our best insurance against being ferried by one of the unfortunate three *per cent.* lies in the law of averages.

Most people would not relish the prospect of being the central character in an inquest where the jury returned a verdict of "Killed by the Law of Averages."

WHAT IS A POINT OF ORDER?

[CONTRIBUTED]

The above question has been asked both in jocular and serious vein on many occasions, and I have noticed that no one attempts to give an answer, yet strangely enough it seems to be a comparatively easy question to answer. In fact, it seems so easy to answer that my confidence in the accuracy of my own opinion tends to be weakened. It is an experience which is not infrequent when a subject, which appears to be wrapped up in mystery to other people, seems crystal clear to oneself.

There is undoubtedly a good deal of confused thinking on the subject, as is clear from the many occasions on which in all kinds of assembly, people rise "on a point of order" which is no more a point of order than an elephant is a domestic animal.

Before attempting to say what a point of order is, it might be informative to consider what it is not. How often do we hear people who have previously spoken on a subject interrupt a subsequent speaker "on a point of order" to explain that they did not mean to convey the interpretation which the subsequent speaker has put on their remarks? Again, how frequently does a person use this device to correct a statement made by a speaker?

Actually, a point of order can only be raised on questions purely of procedure. Where a speaker deviates from the strict rules of debate or the standing orders of the body of which he is a member, another member is entitled to rise on a point of order. It is a submission to the chairman that the speaker has violated the rules of debate or the standing orders of the body, the observance of which it is the duty of the chairman to secure. If, for example, a member speaks longer than the time permitted by standing orders, he is committing a breach of order to which another member is entitled to draw attention "on a point of order." Similarly, if the mover of a motion introduces new matter in reply to a debate, attention can be drawn to this "on a point of order." Again, if a member formally seconds a motion and subsequently rises to speak on it (where this is not permitted by standing orders) and no objection is taken by the chairman, another member is entitled to rise "on a point of order."

It is surprising, however, how rarely incidents occur in practice which are really breaches of order, and my experience has been that on ninety-nine occasions out of a hundred when a member of a body "rises on a point of order" it is not a true point of order at all. One is aware of the fact that many of those raising such points realize that they are not points of order; it is merely a device used to enable the person concerned to secure another word in the debate. This is a matter against which a strict chairman is always on his guard. His task, however, is not easy, since until the member has made his point, the chairman is unable to decide whether what he is proposing to raise is a point of order or not. By that time the damage, if it is damage, has been done, and the member has made his point, even though it is not a point of order. There is one very effective way of preventing this, and that is for the chairman to require the member to indicate at the outset the standing order or the rule of debate which he is contending has been infringed.

The raising of unnecessary points of order has become a recognized debating device, in the sense that it is often done, but can be extremely unfair to members of any body in which it is used too frequently. The accomplished speaker is not put off his line of thought by interruptions of this kind, but it may well cause embarrassment to one who does not find public speaking easy, or has a tendency to nervousness. One answer to this is that it is better to put a speaker off his theme rather than to allow an incorrect statement to go unchallenged, or a wrong interpretation to be put on an earlier statement, but there is a way of avoiding this without interrupting the speaker in the course of his remarks, namely, by rising after the speaker has finished his remarks and asking the permission of the chairman to make a point of personal explanation. Such a point should, however, be made very simply, in as few words as possible, and should be confined merely to correcting the speaker's statement without elaboration. While many forms of standing orders do not provide for points of personal explanation, no reasonable chairman would refuse to accept one.

In conclusion, it should be said that whether a point of order or a point of explanation is being made, the same rule should apply as in the case of speeches generally. In other words, it should be brief, to the point, and made without needless repetition. In this connexion, the words of Oliver Wendell Holmes are particularly apt—

> "Once more; speak clearly if you speak at all:
> Carve every word before you let it fall."
>
> "EPHESUS."

WEEKLY NOTES OF CASES

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Hilbery and Cassels, JJ.)

SURREY COUNTY VALUATION COMMITTEE *v.* CHESSINGTON ZOO, LTD.

December 13, 14, 19, 1949

Rating—Valuation—Zoological gardens—Profits basis.

CASE STATED by the Rating Appeals Committee of Surrey Quarter Sessions.

Before June 14, 1948, Chessington "Zoo" was assessed at £800 gross value and £663 rateable value. Early in 1948 the Surbiton Rating Authority proposed that those figures should be increased to £3,000 and £2,497 respectively. The ratepayers, the proprietors of the "Zoo," objected. On March 24, 1948, Surrey County Valuation Committee made a proposal to amend the list in respect of the hereditament on the ground that the assessment was insufficient, incorrect, and unfair, and that additions and alterations had been made to the property. They proposed figures of £8,889 gross value and £8,000 rateable value (in place of the original figures of £800 and £663). Surbiton Rating Authority and the ratepayers objected. Surrey (North-Eastern Area) Assessment Committee heard that proposal and the objections to it and assessed the hereditament at £3,170 gross value and £2,853 rateable value. Surrey County Valuation Committee appealed from that decision to quarter sessions. Quarter sessions allowed the appeal and assessed the gross value at £7,230 and the rateable value at £6,507. They assessed the value of the hereditament by starting with the estimated average annual trading profit of the "Zoo" for the years 1947 to 1952. From that figure they made estimated deductions for directors' emoluments, audit fees, sale of produce, and depreciation, and then arrived at the figures in question by taking a proportion of that balance.

The Surrey County Valuation Committee appealed, and the ratepayers cross-appealed, contending that the profits basis ought not to have been applied, and that the basis had never been applied to a commercial, but only to a public utility, undertaking.

Held (CASSELS, J., dissenting), that, as quarter sessions were satisfied that there was no other way by which they could arrive at the notional rent which a hypothetical tenant of the premises would be likely to pay to a hypothetical landlord than by looking at the trading profits, it could not be said that they had applied a wrong principle, and the appeal must be dismissed.

Counsel: *Geoffrey Lawrence* for the county valuation committee; *Percy Lamb, K.C.*, and *Widgery* for the ratepayers.

Solicitors: *Crofts & Ingram & Wyatt & Co.* for *Dudley Aukland*, Kingston-on-Thames; *Frere, Cholmeley & Nicholsons.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., Humphreys and Hilbery, JJ.)

WAROQUIERS *v.* MARSDEN

December 19, 1949

Criminal Law—Brothel—Assisting in management—Election by prosecution to proceed summarily—Penalty of imprisonment not exceeding three months—No right to trial by jury—Criminal Law Amendment Act, 1885 (48 *and* 49 *Vict., c.* 69), s. 13 (1).

CASE STATED by the Chief Metropolitan Magistrate.

An information was preferred at Bow Street magistrate's court by the respondent, Marsden, charging the appellant, Waroquiers, with assisting in the management of a brothel, contrary to s. 13 (1) of the Criminal Law Amendment Act, 1885. At the opening of the case counsel for the appellant contended that the appellant had a right to be tried by a jury, but the magistrate held that he had no such right. The appellant appealed. By the Criminal Law Amendment Act, 1885, s. 13: "Any person who—(1) keeps or manages or acts or assists in the management of a brothel . . . shall on summary conviction . . . be liable—(1) to a penalty not exceeding £20 or, in the discretion of the court, to imprisonment for any term not exceeding three months . . ."

Held, that, as the charge had been brought under s. 13 and not for a common law offence, and as the appellant, not being liable to a penalty of more than three months' imprisonment, had no right to elect to go for trial under s. 17 of the Summary Jurisdiction Act, 1879, the offence must be treated as a summary offence for all purposes, and the appellant had no right to demand trial by jury.

Appeal dismissed.

Counsel: *Salmon, K.C.*, and *Du Cann* for the appellant; *Vernon Gattie* for the respondent.

Solicitors: *Albin Hunt & Stein*; *Allen & Son.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

NEW COMMISSIONS

ESSEX COUNTY

William Wilkinson Addison, 169, High Road, Loughton.
Alfred John Belton, Hartley, High Street, Great Wakering.
John Thomas Coles, 10, Rodney Road, Greenstead, Ongar.
Mrs. Nellie Lilian Maud Cox, Woodside, Perry Street, Billericay.
Eric Cyril Boyd Edwards, M.C., North Lodge, High Road, Hockley.
David Gemmill, Paslow Hall, Ongar.
Mrs. Charlotte Rose Scott Gunter, Crescent House, High Street, Billericay.
Dr. Mary Milthorpe, Lauriston House, Chipping, Ongar.
Mrs. Lilian Florence Norman, Bungalore, Worthing Road, Lauriden.
Mrs. Ellen Elizabeth Oliver, 36, Moore Avenue, South Stifford, Grays.
Arthur Pavie, Linee View, High Road, Langdon Hills.
George William Phillips, 4, Harwater Drive, Loughton.
Mrs. Violet Tabor, The Old Rectory, Sutton, Rochford.
Mrs. Joyce Louisa Lilian Woods, 81, Priory Avenue, Chingford, E.4.

PENZANCE BOROUGH

George Osborne Cock, 10, High Street, Penzance.
Thurstan Tregoning Lane, Trenarthan, Lescudjack, Penzance.
Miss Nancy Naomi Williams, Elm Tree, Polwithen, Penzance.

SUSSEX COUNTY

Edward Hayley Beale, Garstons, Burwash.
Laurence Burtenshaw, 69, Western Road, Haywards Heath.
Reginald Cane, 82, Windsor Road, Bexhill-on-Sea.
Herbert Catt, New Bentley, East Guldeford, Rye.
Harry Coghill, Crowham Manor, Westfield, near Battle.
Anthony Dallimore Cowdy, Ashley Lodge, Rotherfield.
Peter Francis John Doncanson, Eatons Farm, Ashurst, Steyning.
Miss Winifred Margaret Fawssett, 56, St. Anne's Crescent, Lewes.
George Mervyn Anstey Hamilton-Fletcher, Shermanbury Place, Oving, Chichester.
Mrs. Lena Marson Frewen, Sheephouse, Brede.
William Ivor Grantham, Massetts, Scaynes Hill.
Cecil Douglas Herniman, Shopwyke Grange, Oving, Chichester.
Mrs. Nora Winifred Hewitt, Flattenden Cottage, Wadhurst.
Frank Gilbert Holmes, Wyncot, 66, Millthorpe Road, Horsham.
Miss Margaret Arnold Huxley, Ancaster Gate School, Dorset Road, Bexhill-on-Sea.
Sir Arthur Probyn Probyn-Jones, High Seas, South Cliff, Bexhill-on-Sea.
John Henry Guy Nevill, Earl of Lewes, O.B.E., Houndsell Place, Mark Cross.
Lady Mary Elizabeth Little, Martins, Thakeham.
Sir Giles Rolls Loder, Leonardslee, Horsham.
Miss Sylvia Fletcher-Moulton, Court House, Barcombe, Lewes.
Joseph Cecil Pargeter, 27, Railway Road, Newhaven.
William Baring Pemberton, Morriswood, Holbrook, Horsham.
James Malcolm Leslie Renton, Rowfold Grange, Billingshurst.
Mrs. Barbara Stuart Rolfe, Park Lodge, Old Town, Bexhill.
Cecil John Rugg, Two Trees Cottage, Kingston, near Lewes.
Sir Reginald Taaffe Sharpe, K.C., Dragonfield, Boreham Street, near Hailsham.
Ernest Reginald Thomas, Pasdale, 28, Sackville Lane, East Grinstead.
John Arthur Stuart Tillard, South Ham, South Chailey.
Ernest William Bedford Turner, 5, Bahram Road, Polegate.
Elined Jocelyn Allen-Williams, Beach Lodge, Granville Road, Littlehampton.
Arthur Glendower Whittaker, 60, Ford Road, Arundel.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 3.

REFUSAL OF DRUNKEN PERSON TO LEAVE LICENSED PREMISES

Two men aged twenty-seven and forty-four respectively, appeared recently before the Wolverhampton justices charged with the offence of being drunken and refusing to quit a licensed hotel in Wolverhampton when requested to do so by a servant of the licensee, contrary to s. 80 Licensing (Consolidation) Act, 1910.

The defendants pleaded not guilty and said that they were not doing any harm.

The court decided to convict and the chairman commented that it might be unfortunate for the defendants that he was also chairman of the licensing committee, but he was determined to protect Wolverhampton licensees and to give them every opportunity of conducting their houses as they should be conducted.

The first defendant was fined £5 and ordered to pay £2 10*s.* costs and the second defendant was fined £3 and ordered to pay £2 10*s.* costs.

COMMENT

It is gratifying to find such wholehearted recognition of the support due to licensees in the conduct of their business.

The facts of the case reported above are not known to the writer but there have been many cases reported in recent months where disgruntled customers at public houses have indicated their displeasure by conduct which has at times been more appropriate to animals than to human beings and it has been a matter of regret to note that, in some cases, comparatively lenient sentences have been passed on such customers.

It cannot be too strongly stressed that licensees in some areas of the country have a difficult and thankless task to perform in enforcing the licensing laws and it is only fair that, when members of the public render it difficult for licensees to conduct their businesses as they should be conducted, exemplary punishment should be inflicted.

Section 80, it will be remembered, entitles a licensee to refuse to admit, or to turn out of the premises, any person who is drunken, violent, quarrelsome or disorderly and if such a person refuses to quit when requested to do so he is liable to a maximum penalty of £5.

(The writer is indebted to Mr. H. M. Foster, clerk to the justices, Wolverhampton, for information in regard to this case.) R.L.H.

No. 4.

PILOTAGE OFFENCES

In December, 1949, the Russian master of a ship *Vladivostock* appeared before the Liverpool justices upon two charges both laid under s. 11, Pilotage Act, 1913.

The first charge alleged that on December 20, being master of the ship, the said ship was navigating not under pilotage in the Liverpool pilotage district, a district in which pilotage is compulsory, for the purpose of entering the port of Liverpool, a port in the said district, after a licensed pilot had offered to take charge of the said ship.

The second charge alleged that on the same date the defendant, whilst master of the said ship then navigating in the Liverpool pilotage district, a district in which pilotage is compulsory, for the purpose of entering the port of Liverpool, a port in the said district, did fail to display a pilot signal until a licensed pilot came on board.

The defendant pleaded not guilty to both charges.

For the prosecution it was stated that a pilot boat signalled the *Vladivostock* by Aldis lamp but there was no reply until the ship gave her name when she was a mile away. A signal "Close for pilot" was acknowledged with the request "Where is my pilot. Give me pilot." The pilot boat signalled "Pilot here" and this was acknowledged. Another boat had come up for a pilot, and the *Vladivostock* waited, but just as a pilot was to be taken to her she headed for Liverpool. Futher efforts to contact the *Vladivostock* failed and she took up a pilot at the Bar Lightship, thirty-six miles further on.

The senior apprentice of the pilot boat in cross-examination stated that he did not see any pilot signals on the *Vladivostock*.

The defendant stated that he had sailed to Liverpool once before and when he did not receive a pilot at Point Lynas he radioed for one at the bar. "I saw the pilot boat and began to give signals by morse, pyrotechnic and blasts on the whistle" he said. He claimed that he received no signals apart from a request for the name of his ship. "I understood I was finished with and free to go" he said.

Cross-examined, he said he knew the pilot boat was on duty, but did not know whether there would be a pilot for him. He was busy looking after the ship and did not read messages from the pilot boat. His mate and the wireless operator did that.

It was stated that the pilotage dues were £19 9*s.* 6*d.*

The justices decided to convict and fined the defendant £20 on the first charge and £10 on the second charge.

COMMENT

Section 11 (1) of the Act provides that every ship (other than an excepted ship) while navigating in a pilotage district in which pilotage is compulsory for the purpose of entering, leaving, or making use of any port in the district and every ship carrying passengers (other than an excepted ship) while navigating for any such purpose as aforesaid in any pilotage district, shall be either under the pilotage of a licensed pilot of the district; or under the pilotage of a master or mate possessing a pilotage certificate for the district who is *bona fide* acting as master or mate of the ship.

Subsection 2 of the section provides that a master of a ship who fails to comply with the provisions of subs. (1) after a licensed pilot of the district has offered to take charge of the ship shall be liable to a fine not exceeding double the amount of the pilotage dues that could be demanded for the conduct of the ship.

Subsection 3 of the section defines "excepted ships" and includes . . . His Majesty's ships, pleasure yachts, fishing vessels, ferry boats, and ships of less than fifty tons gross tonnage.

(The writer is indebted to Mr. H. A. G. Langton, M.B.E., clerk to the justices, Liverpool, for information in regard to this case.)

R.L.H.

PENALTIES

West Bromwich—December, 1949—stealing 8½ *cwt.* of scrap lead—fined £10. Defendant was employed by a company which repaired roofs and to do this the old lead had to be stripped off. The lead stolen was worth £34, and was sold by defendant for £28 10*s.*

West Bromwich—December, 1949—assault—fined £2. Defendant saw a bus driver and conductor eating chips at the side of their bus at 10.50 *p.m.* He asked the driver for a chip but the application was refused. Defendant then put his arms round the driver's neck and struck him rather violently in the eye.

West Bromwich—December, 1949—wilful damage to property—fined £5. To pay £6 5*s.* 6*d.* costs and £7 9*s.* 8*d.* the value of goods damaged. Defendant, a twenty-seven year old bricklayer's labourer, had previously been warned by the licensee's wife not to enter a certain public house; he went to the house and when refused liquor threw a glass across the bar breaking bottles of whisky, gin, brandy, wine, lime cordial and several beer glasses. He was then ejected by other customers.

Salisbury—December, 1949—failing to take reasonable precautions to ensure the safety of passengers—fined £1. To pay 7*s.* 6*d.* costs. Defendant was conductor of a bus which moved off at the moment that a seventy year old woman was about to board it. The woman was dragged along the ground, her shoulder was dislocated and her body was bruised.

Birmingham Assizes—December, 1949—throwing nitric acid—five years' imprisonment. Defendant, a fifty-two year old woman separated from her husband, hoped that a fifty-eight year old widower for whom she did house work would marry her when she was free. On learning that he was associating with another woman she said: "If I can't have you, I will make you as no one else can." She then threw nitric acid at the widower blinding him in the left eye.

Woodstock—December, 1949—trespassing in search of game—fined £2.

Cirencester—December, 1949—driving a public service vehicle without due care—fined £5. To pay 28*s.* 3*d.* costs.

Cirencester—December, 1949—failing to take all reasonable precautions for the safety of passengers after being warned of impending danger—fined £5. To pay 28*s.* 3*d.* costs. Defendants were driver and conductor respectively of a bus which took a wrong turning at night. The conductor was warned that a double decker bus could not pass under a bridge which lay *en route*, but replied that he had every confidence in the driver. The bus struck the bridge, one passenger was killed and others injured.

REVIEWS

Fifty Forensic Fables. By "O." London: Butterworth & Co. (Publishers) Ltd. Price 10s. 6d.

Many readers will remember the illustrated Forensic Fables which appeared in the *Law Journal* between the wars. An earlier edition of fables collected from them was said by *Punch* to embody "a happy example of judicious, not judicial, levity, mingling frivolity with shrewdness." The publishers are to be congratulated upon producing this reprint, selected from the series, to remind people who are already acquainted with the Fables, and to introduce another generation to them. The secret of their authorship had come out, at any rate in legal circles, before their first appearance in book form in 1926. The late Theo Matthew was well known to his friends (and even outside that wide circles, as a wit, endowed with the double talent of the pen and pencil: there must be many people in the Inns of Court who, like the present reviewer, cherish examples of his work thrown off quickly during the hearing of a case. Among the fifty cases portrayed in the present book, every reader will have his two or three favourites, perhaps by reason of the humour of the letterpress, perhaps because of some real or fancied likeness in the pictures. Judges, Chancery bar, and clerks, are quintessential types; there is perhaps only one quite obvious portrait—the "languid leader" is F. E. to the life, with letterpress to match. At whatever page one opens the book, one cannot help finding entertainment, and one is more likely than not to find instruction also. Not the least amusing feature of the book is the index containing such items as "BEARER BONDS, and coupons, disposed of by white-haired trustee"; "BUFFER, *see* sagacious old buffer"; "ONE, quick, clerk fond of." Appended to the Fables is "The story of an ancient line," a political skit upon the peerage, composed by Theo Matthew in his capacity of a liberal politician in 1910, when the conflict between the Liberal Party and the House of Lords was at its height. We can hardly think of a better New Year present than these Fables, for a recipient qualified to understand them.

Rent Control. By Dennis Lloyd and John Montgomerie. London: Butterworth & Co. (Publishers) Ltd. Price 25s. net.

Rent Control is another of the subjects upon which there is apparently no end to the making of books. These vary in method and in quality. Some are upon lines of straightforward annotations of the statutes, section by section; others provide an account under subject headings, followed by the text of the statutes, with cross-references from one part of the book to the other. The latter pattern is the better for this topic, because of the extreme confusion of the statutes, and we know of two books, at any rate, which are very good indeed. It is that same pattern which has been followed by the learned authors of the present work, a newcomer in the field. But they have followed it with a difference. The narrative portion of the book deals not merely with the Rent Restrictions Acts and their recent offshoots of 1946 and 1949, but also with so much of the ordinary law of landlord and tenant as is necessary, to enable the reader to have in one cover a complete conspectus, of the law of landlord and tenant as it applies to houses within the statutory limits. Our own experience indicates how useful this is likely to be, particularly upon such matters as the determination of a contractual tenancy, where there is often confusion in the mind of the parties, if not of their legal advisers, about the relation between the contractual and statutory status. There is also a chapter devoted to practical aspects of procedure, upon which even the best of the previous textbooks have been rather cursory, and there is a chapter on conveyancing, designed to help with the drafting of tenancy agreements and the sale of rent controlled premises. This last has produced new difficulties under the Act of 1949, because of the increased liability for the return of premiums which may have been obtained from the tenant in the past. As for the drafting of tenancy agreements, our own experience indicates that the general standard is incredibly low; the language is commonly inept and frequently misleading. This may be generally due to the drafting of agreements by estate agents, and we suspect by stationers, but agreements for small property which are drawn up by solicitors are by no means seldom open to legal objection, and the conveyancing precedents in this book should therefore help practitioners (and so help their clients) in a field where, too often, it has not been thought worth while to obtain the assistance of a competent draftsman or even to refer to one of the major books upon conveyancing. Coming late into the field, the learned authors have had the opportunity of providing what is not yet to be found in any of the previously existing books on general rent control, namely a detailed exposition of the Act of 1949. A number of practical examples are given, showing how that Act works in regard to the recovery of premiums and the charging of premiums upon assignments. Similarly the carrying into the book of decisions up to October, 1949, means that it is as near as can be up to date, at the point of time when it comes into the hands of the public. We look forward to finding it of much use in our own work, and every practising solicitor, or official of an estate which owns property or a society which acts for tenants, will be well advised to add this to his working books.

Supplement to the Law of Town and Country Planning. By J. R. Howard Roberts. London: Charles Knight & Co., Ltd. Price 25s. net.

Sir Howard Roberts' main work upon the Town and Country Planning Act, 1947, appeared in March, 1948, which was some three months before the Act was brought fully into operation. It is an indication of the extent to which legislation of this class is always growing, and is dependent upon statutory instruments, that the present work should so soon have been necessary, and that it should cover close upon three hundred pages. (This statement is perhaps slightly illusory, because of the generosity of the publishers in spacing and in margins. The supplement is indeed a good deal easier to read than many works of the same scope.) It covers everything which had passed into law up to July, 1949, while the learned author's preface gives a short, but adequate, account of the Lands Tribunal Bill and the National Parks Bill. There are now so many books available on town and country planning that few lawyers can have felt justified in getting all of them. The choice between one and another must, generally, be based on personal preference, but those practitioners who have hitherto been using Sir Howard Roberts' main work can confidently be advised that the supplement will give them all that such a supplement should give.

Famous Advocates and Their Speeches. By Bernard W. Kelly. London: Sweet & Maxwell, Ltd. Price 12s. 6d. net.

This is the second edition of a collection first published in 1921. It is, perhaps, an indication of the change in forensic fashions that it still ends with extracts from Carson. It begins with Erskine; from Erskine to Carson it contains short extracts from the speeches of most of the remembered forensic orators, with a good many whose names are scarcely known today. Dedicated to Sir Thomas Moloney, last of the Lord Chief Justices of Ireland, and produced by Mr. Kelly, it was to be expected that there should be some predominance of Irish examples, but, when one is thinking about oratory, a book is none the worse for that. It would perhaps be unfair to complain, when so much is given; but our own impression is that a better idea would have been gained, of forensic oratory at its best, if the examples had been longer—even though, to keep the book down to its present size, this would have meant that they must be fewer. The impression left, at least upon one reader, is of many purple patches, which can hardly be appreciated apart from their context. However, each of the lawyers here commemorated is furnished with a biographical note which is, in itself, worth having; and it is pleasing to find an attempt at just appraisal of the characters of such men as F. E. Smith and Carson. Our impression is that the author has attempted to be scrupulously fair, not merely in his choice of extracts but in his account of the lives of those whom he selects, and the book can be cordially commended for what it sets out to be and do.

Probation and Re-Education. By Elizabeth R. Glover, M.A. London: Routledge & Kegan Paul, Ltd. Price 12s. 6d. net.

Recently we reviewed an excellent up-to-date textbook on probation. Now comes Miss Glover's remarkably fine book, which is in no sense a textbook. Indeed, if it were a law book the time of its publication would have been unfortunate, since it is written on the basis of what we are beginning to call the old law of probation, and the publishers have explained, in a note issued at the request of the author, that although terminology and technicalities have been changed by the coming into operation of The Criminal Justice Act, the underlying principles remain unchanged. We have no hesitation in supporting this view and in recommending the book as no less valuable because of the changes in the law since it was written.

Probation is sympathetically regarded by most people nowadays, and probation officers are esteemed as devoted workers in the field of social service. However, few people indeed know just what happens to the offender when he is handed over to the probation officer, how the probation officer sets to work, what is his attitude towards the offender and his offence, or how much time and thought the officer may devote to a case. Miss Glover lets us see just how things are done, and what it is like to be an earnest, conscientious probation officer.

The most important part of the probation officer's duty, as she sees it, is giving friendship. The court may have had to speak sternly and to utter a warning, but it is for the probation officer neither to chide nor to threaten, but rather to be a friend and so to restore and re-educate. It is a mistake to believe that most probationers are contrite and humble; they are more likely to indulge in self pity and to show resentment. The wise probation officer can change all this by letting the probationer come to himself, and then will come regret and a determination to do better. "The art of probation is to stimulate the probationer's own wish for better things and a different way of life, and then to support his efforts to achieve this end."

Few probation officers would care to deny the need for inspiration from outside themselves if their work is to be truly effective. Even if they subscribe to no orthodox religious beliefs, there is sure to be a spiritual background. It is manifest that in Miss Glover's own life and work things spiritual are a powerful influence, and her chapter on faith is full of wisdom and beauty. She is worldly wise as well as spiritually minded, and she would never dream of forcing the pace, if we may use such an expression, in trying to develop the right attitude towards religion, though she would be quick to seize the opportunity for re-education on the spiritual side, especially where a probationer had had the benefit of a religious upbringing.

On the practical side, the book shows us what a probation officer may have to do about material help, interests, friends, family life and, sometimes, removal from home. There are some thoroughly sensible hints on interviewing and one realizes how important quite small details of behaviour, the arrangement of furniture, and even such matters as the offer of a cigarette or a sweet may be.

Psychology and psychiatry have their place in the general scheme without being over emphasized.

Miss Glover has done a great deal of work in furtherance of the probation system. She has now added a valuable contribution to the literature on the subject, for anyone who reads this little book must gain a far more intimate understanding of the purpose and the results of probation than could be acquired even by frequent attendances in court.

MISCELLANEOUS INFORMATION

LAW SOCIETY—QUESTIONS FOR THE FINAL EXAMINATION

[By the courtesy of the Law Society, we are able to give hereunder the questions for the final examination set for Wednesday, November 9, 1949 (2.30 p.m. to 5.30 p.m.).—Ed. J.P. and L.G.R.]

The Law and Practice of Magistrates' Courts, including Indictable and Summary Offences, Matrimonial Jurisdiction, Bastardy, Juvenile Courts, Treatment of Offenders, Civil Jurisdiction, Collecting Officers' Duties, the Issue of Process, Evidence in Criminal Cases, and Licensing.

1. A is charged with the indictable offence of stealing a lamb. The following facts are proved in evidence before the examining justices: A without any right had put into a field belonging to C twenty-nine of his own lambs, there being already there ten lambs belonging to B. Early in the morning A drove away his twenty-nine lambs and with them one lamb belonging to B. A sold his lambs, and, it being pointed out by the purchaser that there were thirty lambs he completed the sale and received the price of the thirty lambs which he appropriated to his own use. A later denied having done so and told other untruths about the matter. The justices are satisfied that at the time he drove the lambs from the field, A did not know he was also taking one of B's lambs. A's solicitor submits that there is no case to answer, as at the time he took B's lamb A had no *animus furandi*. What considerations would you bear in mind in advising the justices on this submission?

2. An order is made by a court of summary jurisdiction against D for the payment of a civil debt of £5. He defaults in payment and has no goods. Can payment be enforced by imprisonment?

3. On October 1, 1949, a husband is £10 in arrear in respect of a maintenance order of £2 per week made under the Summary Jurisdiction (Married Women) Act, 1895, and a summons is issued to enforce the arrears. On the return day, October 29, the husband who answers the summons, is further £8 in arrear, as he admits. Can the justices deal with the full arrears of £18 or must they confine themselves to the £10?

4. S is observed by two policemen to go to a block of flats and to examine the locks of some of the doors and then leave. Shortly after leaving the block of flats he is arrested and subsequently charged under s. 4 of the Vagrancy Act, 1824, with being found in an enclosed area for an unlawful purpose. He pleads not guilty and his solicitor submits there is no case to answer as *(i)* he was not arrested in the place where, it was alleged, he was found for an unlawful purpose and *(ii)* the place was not in an "enclosed area." Discuss this submission.

5. Mrs. W, a widow, wishes to adopt an illegitimate child under the Adoption of Children Act, 1926. The child was born in 1943 and lived with her mother until the mother died in 1947. Thereafter she has been living with various relatives and since 1948 has been living with the putative father. Mrs. W desires to know whether the justices can make an adoption order without the consent of the putative father being obtained. Advise her.

6. F is charged with burglary and the hearing against him is adjourned by the examining justices, he being granted bail in his own recognizance of £100 and two sureties of £50 each. You are acting as F's solicitor and he informs you that he can get G and H to act as sureties if he will give them £50 each as security so that they will lose nothing if he absconds. How would you advise F?

7. Can a solicitor who is a justices' clerk act in regard to any matters under the Licensing Acts relating to premises in his division?

8. A girl aged sixteen was committed by a juvenile court to the care of a county council as a fit person on January 4, 1949. The county council now desire this order to be varied and that, instead, the girl be placed under the supervision of a probation officer. Can this be done?

9. A and B are jointly charged with receiving stolen goods, elect to be dealt with summarily and plead not guilty. A gives evidence in support of B's case but does not give any evidence in support of his own. Can A be asked questions in cross-examination tending to criminate him as to the offence charged?

10. On the granting of a bastardy summons what provisions as to fixing the date of hearing have to be borne in mind?

11. An information is preferred against M which contains two offences: dangerous driving contrary to s. 11 (1) of the Road Traffic Act, 1930, and also driving without due care and attention contrary to s. 12 (1). Is this in order? If not, what steps should be taken?

12. You are consulted by a married woman who says she has been hit on several occasions by her husband. She says she is anxious to obtain a separation order against him. What general advice would you give her as to the facts that she would have to prove so as to obtain an order?

Local Government Law and Practice.

1. Tailor, who is a British subject of full age, and not subject to any legal disability, resides in a house which he rents in the rural parish of Hayfield, which has a population of 500 and is in the rural district of Barleycorn in the administrative county of Loamshire. Tailor owns a freehold shop in the county borough of Easthampton, which he lets at an annual rent of £100 to a limited company, Tailor (Easthampton) Ltd., in which Tailor is the principal shareholder and of which he is managing director. The foregoing facts have obtained since January, 1949, and you are asked to advise Tailor *(a)* for what local government areas he is entitled to be registered as a local government elector and; *(b)* as to his qualification for election to the local authorities for the several local government areas mentioned in the question. You should assume that Tailor is not subject to any personal disqualification for registration as a local government elector or for election to membership of a local authority.

2. What provisions are contained in the Town and Country Planning Act, 1947, for enabling a land owner to ascertain whether a proposed building operation or proposed change of user of land constitutes development for which statutory planning permission is required?

3. A police officer of the Loamshire Constabulary found a human corpse in a public park in the non-county borough of Mudbury in the administrative county of Loamshire. Death had resulted from natural causes a few hours before the body was found. No relatives or friends of the dead person can be traced. What person or authority is responsible for the cost of burial or cremation of the corpse?

4. You are consulted by a nurse who proposes to open a nursing home for surgical cases in the non-county borough of Mudbury in the administrative county of Loamshire. Your client intends to charge fees and to run the home for profit. The building your client proposes to use is at present a private dwelling-house, and structural alterations will be necessary. She asks you whether any public authority should be consulted and to what extent (if at all) the home will be subject to official supervision. Advise her.

5. State briefly the statutory power (other than reduction or refusal of grant) available to the Minister of Education on the failure of a local education authority to discharge a duty imposed on the authority by the Education Acts, 1944 to 1948.

6. Summarize the functions of a "licensing planning committee" established under the Licensing Planning (Temporary Provisions) Acts, 1945 and 1946. For what areas are these committees appointed?

7. From what sources are the expenses of maintaining the police force met in the cases of: (*a*) the Metropolitan Police; (*b*) the police force for a county borough; (*c*) the City of London Police.

8. (*a*) Explain briefly the effect of an order of *certiorari*. (*b*) would an order of *certiorari* be available to assist an applicant for a licence under the Cinematograph Act, 1909, when the application is in respect of premises not yet built, but which the applicant proposes to build?

9. A county borough council acting as local education authority employs a whole-time dentist to examine and give dental treatment to children attending schools maintained by the county borough council. The council also employs a nurse to assist the dentist in his work, and to act under his supervision. Owing to the negligent failure of the nurse to sterilise certain instruments, a child upon whom the dentist operated in the course of his duties contracted a disease. Discuss the liability of the county borough council in an action for damages brought on behalf of the child.

10. You are consulted by the owner of certain house property which is the subject of a clearance order made by the local authority under the Housing Act, 1936, and to which your client has objected. The order having been submitted to the Minister of Health for confirmation, a local inquiry is about to be held by an inspector of the Ministry. Your client tells you that before steps were taken by the local authority to make the clearance order, members and officials of the local authority viewed the property with officers of the Ministry of Health, and obtained the advice of those officers on the best method of dealing with the property under the Housing Acts. On these facts would you advise an application to the High Court to restrain the Minister of Health from proceeding with the consideration and confirmation of the clearance order? Give reasons for your answer.

11. The parish council of a rural parish, which is much frequented as a holiday resort, consider that there is a need for public conveniences for both sexes, and suggest that such conveniences should be erected on a site which forms part of a county road. Can this proposal be carried into effect, and, if so, by what local authority?

12. Under the Private Street Works Act, 1892, there are two alternative methods of apportioning the cost of the street works among the premises upon which that cost can be charged. What are the two methods, and who decides which method shall be adopted?

ROAD ACCIDENTS—OCTOBER, 1949

The return of the number of persons reported to have died or to have been injured, as a result of road accidents in Great Britain during the month of October, 1949, is as follows:—

Classification of persons	Total		
	Died	Injured	
		Seriously	Slightly
Pedestrians:—			
(i) under fifteen	60	432	1535
(ii) fifteen and over	116	725	1716
Pedal cyclists:—			
(i) under fifteen	9	180	558
(ii) fifteen and over	42	691	2252
Motor cyclists	74	634	1156
Drivers	27	302	1087
Passengers (sidecar or pillion):—			
(i) under fifteen	1	8	23
(ii) fifteen and over	13	137	330
Passengers (other vehicles):—			
(i) under fifteen	7	66	372
(ii) fifteen and over	31	563	2485
All persons 1949	380	3738	11514
1948	403	3014	10573

NOTICES

The next court of quarter sessions for the city of Coventry will be held at the County Hall, Coventry, on Wednesday, January 18, 1950, at 11 *a.m.*

The next court of quarter sessions for the borough of Stamford will be held on Wednesday, January 25, 1950, at 11.30 *a.m.*

CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

FIREWORKS IN CINEMAS AND DANCE HALLS

With reference to the article at 113 J.P.N. 691, the difficulty caused by the use of the term "public place" in s. 80 of the Explosives Act, 1875, may be unsurmountable, but it seems to me that there are several other statutes under which it should be possible to institute successful criminal proceedings.

If personal injury is, in fact, caused by the explosion of the firework, ss. 28, 29 or 30 of the Offences Against the Persons Act, 1861, may be available. If personal injury does not result either s. 29 or s. 30 of the Act may be available. The presumption that a man is taken to intend the natural consequences of his act would appear to dispense with any necessity for express proof of malice or intention.

Quite apart from the above provisions the case of *Scott* v. *Shepherd* (1773), 2 W.Bl. 892, is authority for the view that the throwing of a firework constitutes a common assault against persons within the danger area and, if the firework were to strike anyone or the explosion to burn or otherwise to injure anyone, that would also constitute a battery. In either case the provisions of s. 47 of the Offences Against the Persons Act would appear to be applicable.

Proceedings might also, in certain circumstances, be instituted under s. 10 of the Malicious Damage Act, 1861, reliance again being placed on the presumption that a man is taken to intend the natural consequences of his act.

In similar circumstances to those described by your contributor my chief difficulty has been the purely practical question of finding first-hand evidence of the identity of the offender.

Yours faithfully,
C. L. HOEFROCK GRIFFITHS,
Town Clerk.

Municipal Buildings,
Boston, Lincs.

PERSONALIA

The following have been appointed deputy lieutenants of the county of Kent: Lieutenant-General Sir William Wyndham Green, K.B.E., C.B., D.S.O., M.C.; Major-General the Honourable Gerald Scarlett, C.B.E., M.C.; Major-General Charles Wake Norman, C.B.E.; Brigadier Richard John Streatfeild, D.S.O.; Colonel the Right Honourable Winston Leonard Spencer Churchill, O.M., C.H., T.D.; Major the Right Honourable the Lord De L'Isle and Dudley, V.C.; Major Sir Henry Joseph d'Avidgor Goldsmid, Baronet, D.S.O., M.C.; and Major John Snowdon Robson, M.B.E.

Mr. Henry Ellwood, probation officer at Coventry, and Mr. Harry Keidan of Liverpool have been appointed probation officers for the county borough of Sunderland. Mr. Ellwood, who is forty-four years of age, has held previous appointments in Leeds and St. Helens. Mr. Keidan is thirty-four years of age and has recently completed a course of training with the Home Office Probation Advisory and Training Board. During the war he served in the R.A.F. as a flight-sergeant.

OBITUARY

Sir Louis Stuart, C.I.E., died in London recently. Born in 1870, he was educated at Charterhouse and Balliol College, Oxford. He spent thirty-nine years in India, the last eighteen of which he was on the benches of the two Supreme Courts of the United Provinces, at Lucknow and Allahabad. In 1922 he was appointed to the High Court bench at Allahabad and in 1925 he was selected to be the first Chief Judge of the newly created Chief Court of Oudh. He retired from the bench on his sixtieth birthday.

Mr. Robert H. Prothero, chief constable of Anglesey for the past thirty years, died recently at his home at Trearddur Bay, near Holyhead. He was seventy-three. Mr. Prothero joined the Metropolitan police force and entered the C.I.D. after a period as a patrol officer. In 1904 he was appointed superintendent and deputy chief constable of Anglesey, and in 1918 succeeded his father as chief constable. He was awarded the King's police medal in 1933 for distinguished service. Mr. Prothero founded the Anglesey county police aid fund.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1. Guardianship of Infants—*Jurisdiction of justices after decree of divorce.*

The marriage of H and W has been dissolved. The proceedings were undefended and W did not enter an appearance. No order was made by the court relating to the children of the marriage. Have the justices jurisdiction to consider an application under the Guardianship of Infants Act, for custody and maintenance of a child?

Reference is made to the case of *R. v. Middlesex Justices, ex parte Bond*, (1932) 96 J.P. 487. The following observations are offered on that case:—

1. The wife had entered an appearance and was therefore entitled to be heard before the Divorce Court as to custody.

2. The Divisional Court on appeal held (*a*) that the application to the justices was *res judicata*; (*b*) that the jurisdiction of the justices was ousted by the matter having been before the High Court.

3. The Court of Appeal upheld the Divisional Court on (*a*) but refused to express an opinion on (*b*).

4. The Divisional Court having found the application was *res judicata*, does not their opinion on the second point become *obiter*?

5. Has a wife who has not appeared to a divorce petition a right to go to the court after decree absolute and ask for an order as to custody? SAL.

Answer.

Even if the observations of the Divisional Court in the case cited were *obiter*, we should strongly advise that they should be treated as binding upon justices unless and until that court itself or the Court of Appeal, disapproved them. It is, of course, true that one of the three judges expressed doubt but he did not actually dissent.

From r. 55 of the Matrimonial Causes Rules, 1947, it would seem that a respondent wife who has not entered an appearance is not in a position to apply under that rule, but we think she may make an application under the Guardianship of Infants Acts in the Chancery Division. Further, *see* our answer to P.P. 3 at 113 J.P.N. 195.

2. Landlord and Tenant—*Agreement for post-dated lease—Purchaser of reversion desiring possession.*

A, the owner of a dwelling-house in which he lived alone, arranged with B and his wife to occupy the rooms he did not require, upon payment of rent and upon condition that B and his wife looked after A during his life. A further agreed that in the event of his death B and his wife should occupy the premises as tenants thereof for five years after his death at a rental of 15*s.* per week. A died two and a half years ago and his executors have sold the premises to D. What powers has D with regard to possession for himself? AKK

Answer.

B has two good lines of defence, according as he claims to be a tenant for five years, at law or in equity, or a statutory tenant. If the first, he will have to show what the agreement actually was, but there is nothing impossible about an agreement by a freeholder for a lease to begin at a later date: *Goodright v. Richardson* (1789) 3 T.R. 462. Such an agreement (or the actual lease, unless by deed) is enforceable in equity by specific performance and B may be able to prove that he has an agreement for the whole five years: s. 149, Law of Property Act, 1925; *Lace v. Chandler* [1944] 1 All E.R. 305; *Furness v. Bond* (1888) 4 T.L.R. 457, and other cases noted therewith in 30 *Digest*. This plainly is more advantageous to him than a weekly tenancy, but it appears that he can, at the least, establish a weekly tenancy. We infer that the executors or trustees of A's estate have left him in possession and received rent from him week by week, so that it matters not whether during A's lifetime B was upon the premises as a tenant rendering services or as a servant required to reside by reason of his service. He has been a tenant of some sort for two and a half years, so that even if he is no more than a weekly tenant he can claim the benefit of the Rent Restrictions Acts. The executors or trustees could only transfer to D what they held, which was a freehold subject either to a five years' lease or to a weekly tenancy capable of turning into a statutory tenancy if D gives notice to quit.

3. Public Health Act, 1936—*Enlargement of cesspools—Contribution by council.*

There are within the urban district some properties the drainage of which is connected to cesspools, and it has been discovered that the capacity of these, in some instances, does not exceed 400 gallons. The council have decided to arrange for the emptying of the cesspools, and to impose a charge in accordance with their powers under s. 74 of the Public Health Act, 1936. Owing to the limited capacity of some cesspools, it will be necessary for emptying to take place weekly and, in these circumstances, some members of the council feel that the owners of the properties concerned should be required to enlarge their cesspools, and that the council should make some contribution towards the cost. I am not quite happy about this contribution by the district council but, in view of the fact that a charge of 15*s.* only is to be imposed in lieu of the actual cost of 30*s.* for emptying, it does appear sensible that the council should be at liberty to assist financially in the enlargement of the cesspools, thus ultimately reducing the loss which would fall upon them by virtue of the frequent emptying of the small cesspools. There are some members of the council opposed to giving financial assistance to owners in this respect, and I feel that, if there is any possibility of surcharge, then those members should be suitably protected by an appropriate record on the minutes of the council. Your opinion would be appreciated. A.M.P.

Answer.

We share your doubt about the legality of this payment to owners. If a cesspool is "insufficient" it can be dealt with under s. 39 of the Act of 1936 at the owner's expense, and if, although sufficient, it is "objectionable" it can be dealt with under s. 42 at the council's expense. But neither of the quoted epithets seem to fit these cesspools, for which the Act provides no such middle course as s. 47 (3) and (4) provides for privies. This is not to say that the suggestion in the query is unreasonable. The best solution may be for the council to make up their mind whether they think it is reasonable (and on a long view in the interest of the ratepayers on the ground you state) and, if so, to apply for sanction under s. 228 (1) of the Local Government Act, 1933.

4. Public Health Act, 1936—*Building plan deposited by architect—Statutory notices by council.*

When an architect deposits plans in accordance with the building byelaws of this borough, he submits a building notice which contains his name and address and the name and address of his client. The notice is signed by the architect. I would value your opinion whether the notice of rejection should be served on the architect or on his client if the plans are rejected. One can say that the architect is the person "by whom" the plans were deposited within the meaning of s. 64 (2) of the Public Health Act, 1936, but it is also possible to construe the subsection as referring only to the client when it speaks of the person "by whom or on whose behalf" the plans were deposited. The six words in inverted commas appear again in s. 64 (3), and if one adopts the first mentioned construction of s. 64 (2) it seems to follow that the architect has the right in his own name to ask the court of summary jurisdiction whether the plans were rightly rejected by the local authority. A.K.C.H.

Answer.

We should say that the general practice is to treat the architect or builder who signs the plans or building notice as the person who deposited them, even though he is known to be a duly authorized agent, for signature by whom provision is made in the model byelaws. Such general practice is not to be lightly disregarded in construing an enactment passed when that practice had long been well-known. But s. 158 of the Public Health Act, 1875, under which the practice grew up, a section parallel to s. 64 of the new Act, and still operative for the corresponding notices in regard to streets, is not quite the same. The old section seems to draw a distinction between the "person executing (or proposing to execute) the work," *i.e.*, the architect or builder, and the person causing the work to be executed. The first would, it seems, be (under s. 158) the proper recipient of the notice. It is possible to construe the Act of 1936, where the phrase quoted occurs also in s. 66, as giving the local authority an option which (we agree) will, if exercised in favour of the architect, entitle him in his own right to go to the magistrates under s. 64 (3). But this, as a matter of grammatical analysis, involves expanding the six quoted words to mean "the person by whom the plans were deposited if he deposited them on his own behalf or if that person deposited them on behalf of another person then that other person."

Moreover, s. 66 puts the six-word phrase in apposition to "other the owner for the time being" thus suggesting that the six words refer to a single person. Again, s. 67, which is similar in its purpose to s. 64 (3), speaks of the person who has executed or proposes to execute work, *i.e.*, a single person. The drafting is loose, but on the whole we think the six-word phrase in s. 64 (2) and (3) refers to a

single person, *viz.*, the building owner. Where, however, as is the general practice (apart from very small property and some speculative building) the owner acts through an agent, as the model byelaws allow, there can be no harm in the council's serving notices on that agent: in conceivable, though rare, cases this could be the owner's solicitor, and in the case of a big estate it would normally be the resident estate agent, if it was not an architect. Indeed, where the owner has empowered an architect or other agent to act for him in depositing plans and signing notices, we think he has implicitly authorized the council to address their notices to that agent. But it may be prudent for the council to address their notices to Mr. X, agent (or architect) for Mr. Y, rather than to X as if he were the principal.

5. Rating and Valuation—*Distress warrant for rates—Expenses of bailiff.*

A distress warrant has been returned as "not sufficient goods." The warrant was forwarded to the police (through the magistrates' clerk) who effected service by forwarding the same to the police of the city in which the defaulting ratepayer is now residing. This city employs an outside warrant officer for service and levy. Costs of 4*s.* were paid for fees which included those of the constable serving same. I have now received an additional account from the bailiffs for attendance and inquiries. Earlier warrants were collected by the bailiffs.

Charges of the bailiffs for previous warrants which were met were presumably recovered from the defaulter or their commission included these expenses.

Will you please give me your opinion as to whether—

1. The expense charge is properly payable over and above the normal amount already paid for constable's service. (The outside warrant officer in this case effecting such service.)

2. The employing authority of the bailiff or my authority are liable for this expense charge, if (1) above is in the affirmative.

A. HARROW.

Answer.

1. It is not clear from the query what was the chain of causation which led to "attendance and inquiries," and (previously) "collection" by the bailiffs. But it looks as if a regular course of action had grown up by which the bailiffs were authorized to be the agents of the rating authority. If so, we think the rating authority which had the benefit of their services (and would have had the money, if the money had been forthcoming upon distress) are liable for fees not recovered from the ratepayer.

2. We do not, on the facts before us, see how the city authority can be liable.

6. Road Traffic Acts—*Causing and permitting—Trailers and insurance—ss. 18 and 35 of the 1930 Act—Liabilities of driver of vehicle and of owner for contraventions of those sections.*

A is the owner of a motor tractor; B is the person employed by A to drive the motor tractor; C is A's foreman. A's policy of insurance covers the use of the motor tractor by (i) A and (ii) any other person on A's order or with A's permission. The policy excludes any user which contravenes s. 18 of the Road Traffic Act, 1930. During the absence of A from his farm, C instructs B to fetch farm produce from point X. B takes the motor tractor with two unladen trailers from point Y to point X. At point X, B loads both trailers and returns to point Y with them. Whilst on a road between points X and Y, B is stopped by the police. As a result B is charged with—

(*a*) causing a contravention of s. 18.

(*b*) using a motor vehicle contrary to s. 35.

A is charged with—

(*a*) permitting a contravention of s. 18.

(*b*) permitting a contravention of s. 35.

We shall be glad of your views on the following matters—

1. Should the words "cause" and "permit" in s. 18 be interpreted in the light of Lord Wright's judgment in *McLeod* v. *Buchannan* [1940] 2 All E.R. 187?

2. Is it correct to put B on any charge under s. 18 or should A be the only person charged?

3. Does the parting with control of the motor tractor by A without definite express restriction give a "permission" within the meaning of either s. 18 or s. 35?

4. Can B's contravention of s. 18 be said to be outside what any reasonable person could have contemplated? JETT.

Answer.

It is assumed from the question that it is within the scope of C's authority, in A's absence, to attend to the business and to give orders to B. We think that the answers to the questions put are:—

1. By the wording of s. 18 it is the vehicle which draws the trailers. Therefore anyone, including the driver, who uses the vehicle for the purpose of drawing the trailers is causing the trailers to be drawn. "Permit" should be interpreted in the light of the judgment referred to.

2. B can properly be charged under s. 18 with causing the contravention.

3. Yes, for the purposes of both sections.

4. We think not.

7. Sale of Food (Weights and Measures) Act, 1926—*Deficiency in weight—Procedure and evidence.*

A vendor exhibits for sale fresh fruit made up in boxes under a notice which, after naming the fruit, states that they are "x shillings per lb. box." Some fifteen boxes are weighed by an inspector of weights and measures and it is discovered that upon net weight figures, (*i.e.*, excluding the weight of the box) eleven, and upon gross weight figures (*i.e.*, including the weight of the box), three, of the total number weighed are under 1 lb. in weight.

1. Is such a notice to be regarded as "otherwise specifying" the weight within the meaning of s. 2 of the Sale of Food (Weights and Measures) Act, 1926, so as to make it a statement as to the gross weight?

2. If an information is preferred in each case of short weight, charging the vendor with making a misrepresentation under s. 3 of that Act, is this a proceeding in respect of an alleged deficiency of weight so as to bring s. 12 (1) into operation? and

3. If so, and if the informations relate only to cases where the variation is not inconsiderable within the meaning of s. 12 (1), must the court have regard to the various matters set out in that subsection, in view of the decision in *Case* v. *Dudley Co-operative Society Limited* (1934) 98 J.P. 265?

4. Generally as to the offences committed in the circumstances set out above. S.MAG.

Answer.

1. In our opinion, no; there is nothing to indicate clearly to the customer that the weight of the box itself is included.

2. Yes.

3. If the deficiency is not inconsiderable, it seems clear that the matters referred to in s. 12 (1) need not be taken into consideration.

4. There seems to be ground for a prosecution under s. 3.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

Amended Advertisement

COUNTY BOROUGH OF GRIMSBY

Town Clerk's Department

APPLICATIONS are invited from suitably qualified persons for the appointment as a Legal Assistant in the Town Clerk's office. Salary A.P.T. Grade III. The post is established and the successful candidate will be required to undergo a medical examination. The Council cannot undertake to provide housing accommodation.

Applications, stating the examination qualification held and giving the names of three persons to whom reference can be made, should be sent to the undersigned on or before January 21, 1950.

L. W. HEELER,
Town Clerk.

Municipal Offices,
Town Hall Square,
Grimsby.
December 30, 1949.

METROPOLITAN BOROUGH OF HAMPSTEAD

APPLICATIONS are invited for the permanent appointment of Law Clerk in the Town Clerk's Department at a salary in accordance with Grade A.P.T. IV (£480 to £525) plus London area Weighting.

Applicants must be experienced in the work of a Solicitor's Office or the Legal Department of a local authority.

The Council's usual Conditions of Service apply and the successful candidate will be required to pass a medical examination.

Candidates must disclose in writing whether to their knowledge they are related to any member or senior officer of the Council.

Applications, endorsed "Law Clerk," setting out particulars of experience and qualifications and accompanied by copies of two recent testimonials, must be received by me not later than January 28, 1950.

The Council are unable to provide housing accommodation.

Canvassing is strictly prohibited and will disqualify.

P. H. HARROLD,
Town Clerk.

Town Hall,
Hampstead, N.W.3.

WEST SUSSEX

Chichester Division

APPLICATIONS are invited for the appointment of assistant in the office of the Clerk to the Chichester City and County Justices. Applicants should be experienced in the general duties of a Justices' Clerk's Office, capable of taking Courts in the absence of the Clerk, able to keep magisterial accounts, court registers and other records, and take depositions. Shorthand and typewriting essential.

Salary in accordance with the Clerical Division of the National Scale (£395—£440). Superannuated post. Office in modern Court House.

Applications, stating age, particulars of experience and copies of two testimonials (or names and addresses of referees) to be sent to the Clerk to the Justices, Court House, Southgate, Chichester, by January 21, 1950.

CITY OF COVENTRY

Appointment of Full-time Male Probation Officer for the City of Coventry

APPLICATIONS are invited for the above appointment. The appointment will be subject to the Probation Rules. The successful candidate will be required to pass a medical examination.

Applications stating age, qualifications and experience, together with copies of not more than two recent testimonials, must reach the undersigned within 14 days of the publication of this advertisement.

A. N. MURDOCH,
Secretary to the Probation Committee.

St. Mary's Hall,
Coventry.

METROPOLITAN BOROUGH OF CAMBERWELL

Appointment of Assistant Solicitor

APPLICATIONS are invited from duly qualified Solicitors for the appointment of Assistant Solicitor at a salary in accordance with Grades A.P.T. VII—VIII of the National Scale of Salaries, namely, £665 per annum, rising by annual increments of £25 to £790 per annum, inclusive of London weighting.

Previous local government experience is not essential but applicants should have had previous experience of conveyancing and Police and County Court practice.

The appointment will be subject to the National Scheme of Conditions of Service and to the provisions of the Camberwell and other Metropolitan Borough Council's (Superannuation) Act, 1908, as amended. The successful candidate will be required to pass a medical examination by the Council's Medical Officer of Health.

Housing accommodation cannot be provided by the council.

Forms of application may be obtained from the undersigned and must be returned not later than Saturday, January 28, 1950.

DARRELL MUSKER,
Town Clerk.

Town Hall,
Camberwell, S.E.5.

BOROUGH OF TAUNTON

Conveyancing and Legal Assistant

APPLICATIONS are invited for the appointment of a Conveyancing and Legal Assistant in the Town Clerk's Department at a salary within A.P.T. Grades III and IV (£450-£525) according to experience.

The appointment, which will be determinable by one month's notice on either side, will be subject to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination. Consideration will be given to housing accommodation, if required. Applications, stating age, qualifications, experience and present appointment, together with names and addresses of two referees, should be sent to me not later than January 25, 1950.

Canvassing will disqualify.

L. ATWELL,
Town Clerk.

Municipal Buildings,
Taunton.

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